

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

May 4, 2006

Agenda ID #5639
Quasi-Legislative

TO: PARTIES OF RECORD IN INVESTIGATION 04-02-007

This is the draft decision of Administrative Law Judge (ALJ) Grau. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:hl2

Attachment

Decision **DRAFT DECISION OF ALJ GRAU** (Mailed 5/4/2006)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the
Commission's Own Motion to Determine the
Extent to Which the Public Utility Telephone
Service Known as Voice over Internet Protocol
Should Be Exempted from Regulatory
Requirements.

Investigation 04-02-007
(Filed February 11, 2004)

OPINION CLOSING PROCEEDING**I. Summary**

Today's decision closes this proceeding, because we find we need not establish a regulatory framework for Voice over Internet Protocol telephony (VoIP) to resolve any of the issues raised in this investigation at this time. Because we need not move forward with this investigation, it is appropriate to close this proceeding. We grant the California Community Technology Policy Group's (CCTPG) petition to intervene and deny Disability Rights Advocates' motion for permission to file late comments.

II. Background

The Commission opened this investigation to consider the appropriate regulatory framework that should govern the provision of VoIP. In the Order Instituting Investigation (OII), the Commission tentatively concluded that providers offering VoIP service interconnected with the Public Switched Telephone Network are public utilities offering a telephone service subject to the

Commission's regulatory authority. The OII solicited comments on universal service, E911, access charges, compliance with North American Numbering Plan protocols, consumer protection rules, the impact of regulating or exempting from regulation, and intercompany compensation arrangements. Parties filed opening comments on April 5, 2004 and reply comments on May 14, 2004.¹

In a May 11, 2004 ruling, the Assigned Commissioners denied Verizon California, Inc.'s request that the reply comments in this proceeding be deferred until after reply comments were filed in the Federal Communications Commission's (FCC) proceeding addressing Internet Protocol enabled services. (Notice of Proposed Rulemaking, *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, FCC 04-28, released March 10, 2004.)

Subsequent to the May 11, 2004 ruling, the FCC issued an order, which declared that Vonage Holding Corporation's (Vonage) VoIP service could not be separated into interstate and intrastate communications. Although the FCC noted states would continue to play a vital role in certain areas such as consumer protection, the FCC stated that it, not the states, would determine what regulations apply to IP-enabled services such as Vonage's. (*In the Matter of Vonage Holdings Corporation's Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, 19 FCC Rcd 22404, ¶ 1.) That FCC decision is currently on appeal. (Minnesota Pub. Utils. Comm'n et al. v. FCC, No. 05-1069 (8th Cir.))

¹ Thirty sets of opening comments and seventeen sets of reply comments were filed.

III. Discussion

Our investigation centered on determining the appropriate regulatory framework for VoIP. Since the FCC has determined that it is charged with that role and is exercising its authority, we conclude that it is premature for us to assess what our regulatory role over VoIP will be and to address the issues raised in this investigation. We anticipate the role for state commissions will be defined in the future. Closing this proceeding, which has been inactive for almost two years, is preferable to further delay. Before we close this proceeding, we must address two motions before us.

CCTPG filed a petition to intervene with attached reply comments on June 10, 2004 at the request of the Administrative Law Judge (ALJ). CCTPG notes it timely filed reply comments on May 14, 2004, because it believed low income/minority groups were underrepresented in the proceeding. CCTPG has limited experience with the Commission's Rules of Practice and Procedure and believed it could file comments without becoming a party. No party opposed CCTPG's petition to intervene. The Commission encourages broad participation in its proceedings and would have benefited from the input of CCTPG as a representative of non-profit organizations had this proceeding continued. Thus, we grant CCTPG's petition even though we are closing this proceeding.

Disability Rights Advocates filed a motion for permission to file late comments and a notice of intent to claim compensation on November 8, 2004. Disability Advocates, a non-profit legal center dedicated to the advancement of civil rights for people with disabilities, recently had become aware of the proceeding and sought leave to file late comments to address communications needs and services for people with disabilities. Since we are closing this proceeding and Disability Rights Advocates had not prepared comments, we

deny Disability Rights Advocates' motion for permission to file late comments. If the proceeding had remained open, we would have welcomed Disability Rights Advocates' input. Because we deny the motion for leave to file comments, Disability Rights Advocates' notice of intent to claim compensation is moot.

IV. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure.

V. Assignment of Proceeding

President Michael R. Peevey and Geoffrey F. Brown are the Assigned Commissioners, and Janice Grau is the assigned ALJ in this proceeding.

Findings of Fact

1. The FCC has determined that it, not the states, will prescribe what regulations apply to IP-enabled services such as Vonage's.
2. CCTPG filed a petition to intervene with attached reply comments on June 10, 2004. Disability Rights Advocates filed a motion for permission to file late comments on November 8, 2004.

Conclusions of Law

1. This proceeding should be closed.
2. It is reasonable to grant CCTPG's petition to intervene and to deny Disability Rights Advocates' motion for permission to file late comments.

O R D E R

IT IS ORDERED that Investigation 04-02-007 is closed as set forth herein.

This order is effective today.

Dated _____, at San Francisco, California.